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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. HUGO RENE BAQUIAX, JOEL CIRILO SOSA HERNANDEZ, Defendants.	CR No. 11-436-MRW **GOVERNMENT'S OPPOSITION TO DEFENDANTS' MOTION TO SUPPRESS EVIDENCE; DECLARATION OF LEROI O'BRIEN; DECLARATION OF CRAIG PORTER; EXHIBITS** STATUS CONFERENCE AND EVIDENTIARY HEARING: Oct. 3, 2011, at 3:00 p.m.

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California, hereby files its opposition to defendants' motion to suppress evidence.

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The government's opposition is based upon the attached memorandum of points and authorities, the files and records in this case, and any other evidence or argument that the Court may wish to consider during the next scheduled hearing.

DATED: September 20, 2011

Respectfully submitted,

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/s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On May 13, 2011, the government filed an information, charging defendants HUGO RENE BAQUIAX ("BAQUIAX") and JOEL CIRILO SOSA HERNANDEZ ("SOSA") with hiring and continuing to employ illegal aliens, in violation of Title 8, United States Code, Section 1324a(a)(1)(A), (a)(2), and (f)(1). On September 4, 2011, defendants filed a motion to suppress evidence that the Los Angeles Police Department ("LAPD") seized from the 907 Club during the execution of a search warrant on November 5, 2010.

As explained below, defendants' motion to suppress fails on multiple bases. Defendants failed to establish that they have standing to contest the search warrant. Defendants also failed to establish that they have an expectation of privacy as to the false identification documents seized from many of the female employees of the 907 Club.

Defendants failed to establish that LAPD officers acted in bad faith in seeking the search warrant or that there was a lack of probable cause in support of the application for the warrant. Defendants also failed to show that the search warrant was overly broad or that LAPD officers improperly seized evidence outside of the scope of the warrant. Furthermore, the LAPD could have seized a large portion of the documentation under the plain view doctrine. Even if LAPD officers acted in violation of defendants' constitutional rights, which they did not, the evidence in question is still admissible under the inevitable discovery exception to the exclusionary rule.

Finally, defendants claim that evidence seized should have been returned to the 907 Club instead of turned over to ICE pursuant to administrative and grand jury subpoenas. This argument also fails, because even if defendants had an expectation of privacy as to the documents, that expectation ended once the documents were lawfully in LAPD custody.

II.

RELEVANT FACTS OF THE CASE

The 907 Club was a "hostess club" in downtown Los Angeles that generally catered to Latin American men. (Declaration of Craig Porter, at 1). Customers paid to talk and dance with the club's hostesses, many of whom were illegal aliens. (Id.). Defendants BAQUIAX and SOSA were two of the managers at the club. (Id.).

A. LAPD INVESTIGATION OF THE 907 CLUB

Beginning in June 2010, LAPD investigated the 907 Club for prostitution and illegal gambling. (Declaration of LeRoi O'Brien, at 1-2). On June 25, 2010, three LAPD officers conducted an investigation to determine whether the 907 Club was operating in compliance with its Conditional Use Permit. (Exhibit A, LAPD search warrant and affidavit at Bates Stamped 7668).[1] At that time, the officers discovered seven female employees who did not possess valid State of California identification cards or drivers licenses. (Id.). Employing individuals without valid identification was a violation of the

[1] In support of their motion to suppress, defendant attached a copy of the LAPD search warrant, which is marked as Exhibit 1. This copy of the warrant is incomplete, because page 7 is missing.

club Conditional Use Permit, condition numbers 12 and 14. (Id.; Exhibit B, 907 Club Conditional Use Permit, at Bates Stamped 6668). The LAPD officers then spoke with the club's management, who provided copies of identification cards for various employees. (Exhibit A, at 7668). These cards were not valid, because every number on the copies of the cards presented did not belong to the person listed on each card. (Id.).

On July 22, 2010, two undercover LAPD officers entered the 907 Club and encountered a female employee, who told the officers that lewd acts and prostitution occurred at the club. (Id. at 7669). The employee also stated that these acts cost more than the normal hostess rate. (Id.). Acts of prostitution were in violation of the club's Conditional Use Permit, conditions 14 and 15. (Exhibit B, at 6668-69).

On July 30, 2010, the same two undercover LAPD officers again entered the 907 Club, when the club was advertising the "Bikini Girls Show." (Exhibit A, at 7669). Inside a male restroom, one officer found used condoms on the floor. (Id.). The officers also observed two seated males receiving lap dances during the "Bikini Girls Show." (Id.). The two men were allowed to digitally penetrate the dancer's vaginas. (Id.). After the club's security staff collected money from these two men, two other men were allowed to digitally penetrate the women. (Id.).

On July 30, 2010, one undercover officer observed male customers playing pool for money. (Exhibit A, at 7669). The officer then played in a subsequent game and lost $20. (Id.). This activity occurred within sight of the club's staff. (Id. at 7669-70). This activity was also in violation of the club's

Conditional Use Permit, condition number 14. (Exhibit B, at 6668). On August 11, 2010, four undercover officers observed male customers gamble at the pool table, and one officer played a pool game for money. (Id. at 7670). This activity also occurred within sight of the club's staff. (Id.). Undercover officers again witnessed illegal gambling at the pool tables within sight of the club's staff on August 20, 2010, and August 25, 2010. (Id.).

On November 2, 2010, LAPD officers spoke with a Confidential Informant ("CI"). (Exhibit A, at 7671). The CI stated that she was hired at the 907 Club and provided false identification upon a manager's request.[2] (Id.). While working at the club, the CI observed the "Bikini Girls Show." (Id.). During the show, female dancers exposed their breasts and allowed male customers to digitally penetrate their vaginas. (Id.). The club's security staff collected money from the men and gave it to the cashier. (Id.).

B. THE LAPD SEARCH WARRANT

Based upon all the foregoing, LAPD filed an application for a search warrant. (See generally Exhibit A). On November 2, 2010, a Superior Court judge issued the warrant based upon a finding of probable cause. (Id. at 7666). The search warrant authorized LAPD to search "[a]ll employee records maintained by the club's management, ledgers and records with identification of employees and work schedules." (Id. at 7667). LAPD was also authorized to search electronic storage devices for "records of

[2] For a more complete description of the hiring of the CI, see pages 6 to 14 of the affidavit in support of the complaint.

payment regarding prostitution or gambling." (Id.). LAPD was further authorized to search the dressing rooms and lockers of the female dancers to find items "used for the purpose of prostitution." (Id.).

C. EXECUTION OF THE LAPD SEARCH WARRANT

On November 5, 2010, LAPD officers executed the search warrant against the 907 Club.[3] (Exhibit C, LAPD investigative report, at Bates Stamped 6645). Upon entry into the club, officers observed four female dancers wearing bikinis, and they were providing lap dances. (Id. at 6646). This adult entertainment was in violation of the club's Conditional Use Permit, condition number 13. (Id.; Exhibit B, at 6668). The security guards collected money from the patrons who received the lap dances, and defendant BAQUIAX managed the bikini show. (Exhibit C, at 6646).

After the location was secured, LAPD officers began to check the female employees for valid identification. (Exhibit C, at 6647). Pursuant to the warrant, the officers also checked the employee applications on file for each employee, which contained photocopies of the identification documents used to secure employment. (Id.). Out of approximately 85 female employees working at the 907 Club that evening, LAPD determined that 19 women used false identification documents to obtain employment. (Declaration of O'Brien, at 3-4; Exhibit C, at 6647-48, 6651).

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[3] Earlier the same evening, undercover LAPD officers entered the 907 Club, where they observed male customers playing pool for money. (Exhibit C, at Bates Stamped 6644-45). These men were arrested for illegal gambling at the same time that the officers executed the warrant. (Id.).

LAPD also discovered that another 58 female employees possessed false identification cards, which were stored in their lockers. (Exhibit C, at 6648-49, 6651). These 77 women were arrested and booked into LAPD custody. (Declaration of O'Brien, at 4).

LAPD seized and booked into evidence all the fraudulent identification cards, which included California identification cards, resident alien cards, social security cards, and Mexican identification cards. (Exhibit D, LAPD property report, at Bates Stamped 6964-68).

At the same time that the female employees were being interviewed, LAPD also located and seized numerous business records that were located in two offices at the 907 Club.[4] (Declaration of O'Brien, at 4; Exhibit D, at 6963-64). These records included over 800 employment applications for the female employees. (Declaration of Porter, at 3). These records also included payroll records, time cards, daily sales sheets, and bank records. (Declaration of O'Brien, at 4). LAPD also seized a computer that was located in one of the offices. (Id.).

D. INITIAL ICE INTERVIEWS OF THE FEMALE EMPLOYEES

Following the arrest of the female employees, several ICE agents interviewed these women. (Declaration of Porter, at 3-4). At least 40 women admitted that they did not have valid identification documents. (Id. at 4). These women also admitted that the mangers of the 907 Club, including defendants BAQUIAX and SOSA, hired them even though the managers knew the women did

[4] In their motion to suppress, defendants claim that LAPD took all of the 907 Club's business records. (Defendant's motion, at 25). This is incorrect. LAPD only seized about 75% of the documents. (Declaration of O'Brien, at 4).

not have valid identification documents or authorization to work in the United States. (Id.).

E. TRANSFER OF DOCUMENTS FROM LAPD TO ICE

At the time LAPD executed the search warrant on November 5, 2010, ICE had an ongoing investigation into the 907 Club concerning the hiring and continuing to employ illegal aliens. (Declaration of Porter, at 2). In furtherance of its investigation, on November 8, 2010, ICE issued an administrative subpoena to LAPD, requesting the Form I-9s concerning the club's employees.[5] (Exhibit E, ICE administrative subpoena, at Bates Stamped 6979).

On December 23, 2010, a grand jury subpoena was issued on behalf of ICE, requesting that LAPD produce copies of identification cards seized during the execution of the search warrant. (Exhibit F, Grand jury subpoena, dated December 23, 2010, at Bates Stamped 6975). The subpoena also requested that the LAPD produce copies of its reports concerning the execution of the search warrant and arrest of any employees. (Id.).

On February 2, 2011, a second grand jury subpoena was issued on behalf of ICE. (Exhibit G, Grand jury subpoena, dated February 2, 2011, at Bates Stamped 6977). This subpoena requested that LAPD produce evidence seized at the 907 Club, including identification cards, employee records, and computers. (Id.).

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[5] An employer is required to complete a Form I-9 as part of the process to verify that an employee is authorized to work in the United States. 8 U.S.C. § 1324a(b)(1)(A); 8 C.F.R. § 274a.2.

On February 15, 2011, a Superior Court judge issued an order, allowing LAPD to release property in its custody to ICE. (Exhibit H, Superior Court order, at 2).[6] Later on February 15, 2011, LAPD turned over documents to ICE.[7] (Declaration of O'Brien, at 5; Declaration of Porter, at 5). If LAPD had returned the evidence to the 907 Club instead of turning it over to ICE, ICE would have sought a federal search warrant. (Declaration of Porter, at 5).

III.

ARGUMENT

A. DEFENDANTS FAILED TO ESTABLISH THAT THEY HAVE STANDING TO CHALLENGE THE LAPD SEARCH WARRANT

Defendants do not submit any declarations in support of their motion to suppress. Defendants instead argue in their motion, submitted by their counsel, that "the government treats the defendants as having direct responsibility for the creation, maintenance and record-keeping for the business records and files of the Club" and that defendants had custody and control over these records. (Defendant's motion at 13-14). Thus, defendants

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[6] Exhibit H was only recently obtained as part of the preparation for the instant opposition to the motion to suppress.

[7] In their motion to suppress, defendants at first claim that over 7,000 pages of discovery have been produced, and the vast majority, if not all, of the documents concerned business records and computer files from the 907 Club. (Defendants' motion at 4). Defendants later claim that approximately 7,500 pages of materials have been produced, all of which consisted of documents and computer files from the club. (Id. at 13). Actually, to date, the government has produced 8,562 pages of discovery. At least 1,500 pages consist of interviews of the 907 Club's female employees and redacted copies of their A-Files. The government has also produced hundreds of pages of records consisting of ICE investigative reports and related documents.

claim they have standing to challenge the search warrant "based entirely upon the government's allegations and theory of prosecution." (Id. at 14). As the following shows, defendants' arguments regarding standing are in error.

1. DEFENDANTS FAILED TO ESTABLISH STANDING ON PROCEDURAL GROUNDS

Defendants' failure to submit any declarations in support of their motion violates this Court's local rules. Specifically, the local rules provide:

> A motion to suppress shall be supported by a declaration on behalf of the defendant, setting forth all facts then known upon which it is contended the motion should be granted. The declaration shall contain only such facts as would be admissible in evidence and shall show affirmatively that the declarant is competent to testify to the matters stated therein.

Local Criminal Rule 12-1.1 (emphasis added).

Since defendants did not submit any declarations, the Court may deny the motion to suppress on this ground alone. See United States v. Wardlow, 951 F.2d 1115, 1116 (9th Cir. 1991) (per curiam) (determining that the district court did not abuse its discretion in denying a request for an evidentiary hearing, because the defendant failed to submit a declaration in support of his motion to suppress, in violation of the local rules); see also United States v. Gillette, 383 F.2d 843, 848 (2d Cir. 1967) (indicating that denial of the motion to suppress was appropriate, because defense counsel's affidavit in support did not allege any personal knowledge of the facts at issue); United States v. Marquez, 367 F. Supp. 2d 600, 603 (S.D.N.Y. 2005) (reasoning that a motion to suppress must be supported by an

affidavit).

2. DEFENDANTS FAILED TO ESTABLISH STANDING ON SUBSTANTIVE GROUNDS

The Court may also reject defendants' claim of standing on substantive grounds. A person has standing to raise an alleged violation of his Fourth Amendment rights "only if there has been a violation 'as to him,' personally." United States v. SDI Future Health, Inc., 568 F.3d 684, 695 (9th Cir. 2009) (citing Mancusi v. DeForte, 392 U.S. 364, 367 (1968)). To properly challenge a search or seizure, a defendant has the burden to prove that he had a legitimate expectation of privacy and that the search or seizure violated that expectation. United States v. Lingenfelter, 997 F.2d 632, 636 (9th Cir. 1993); United States v. Isaacs, 708 F.2d 1365, 1367 (9th Cir. 1983). As such, to invoke Fourth Amendment protections, a defendant must establish that a legitimate expectation of privacy by demonstrating a subjective expectation of privacy and an objectively reasonable expectation. Smith v. Maryland, 442 U.S. 735, 740 (1979); SDI Future Health, Inc., 568 F.3d at 695; United States v. Shyrock, 342 F.3d 948, 978 (9th Cir. 2003).

A defendant may "have a legitimate expectation of privacy in a commercial area." United States v. Silva, 247 F.3d 1051, 1055 (9th Cir. 2001). However, "[a]n expectation of privacy in commercial premises ... is different from, and [is] indeed less than, a similar expectation in an individual's home." Minnesota v. Carter, 525 U.S. 83, 90 (1998) (quoting New York v. Burger, 482 U.S. 691, 700 (1987)).

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If a person is merely present on another's commercial property, that person does not have a legitimate expectation of privacy at that location. United States v. Gamez-Orduno, 235 F.3d 453, 458 (9th Cir. 2000). Additionally, managerial authority alone is not sufficient to establish standing. SDI Future Health, Inc., 568 F.3d at 696 (citing United States v. Cella, 568 F.2d 1266, 1270, 1283 (9th Cir. 1977)). On the other hand, an individual has a reasonable expectation of privacy in private work areas for that individual's exclusive use. United States v. Gonzalez, 328 F.3d 543, 548 (9th Cir. 2003); Schowengardt v. General Dynamics Corp., 823 F.3d 1328, 1335 (9th Cir. 1987).

Whether a person has a reasonable expectation of privacy in his work place must be analyzed on a case by case basis as there are a "great variety of work environments." SDI Future Health, Inc., 568 F.3d at 695. In a commercial context, an individual may assert standing for an office for which the individual has exclusive use and for other areas upon considering the following factors:

> (1) whether the item seized is personal property or otherwise kept in a private place separate from other work-related material; (2) whether the defendant had custody or immediate control of the item when officers seized it; and (3) whether the defendant took precautions on his own behalf to secure the place searched or things seized from any interference without his authorization.

Id. at 698 (footnotes omitted). Without a personal connection or exclusive use, a defendant cannot establish standing to challenge the search of a workplace. Id.

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In the instant case, there is apparently no dispute that none of the evidence seized is the personal property of either defendant. Even in their motion to suppress, defendants made no claims as to whether either defendant took any precautions to secure any part of the 907 Club or any evidence contained therein. Defendants instead merely assert that they have standing due to their managerial status, which is an insufficient ground. SDI Future Health, Inc., 568 F.3d at 696.

The pertinent question in this case is whether defendant had exclusive use of the offices, where employee applications, payroll records, and bank records were located. Defendants have not made any assertions as to whether they had exclusive use of these offices, and they cannot properly make such a claim.

Information obtained during interviews with the female employees of the 907 Club indicate that defendants did not have exclusive use of the two offices. The female employees stated that four managers, including both defendants, shared the two offices. (Declaration of Porter, at 5). The women also stated that they saw employees and customers frequently enter these offices. (Id.). The women gave the indication that Michelle Hutchinson, one of the owners of the 907 Club, used these offices. (Id.). Thus, defendants cannot establish exclusive use, and accordingly, they failed to prove that they have standing to challenge the LAPD search warrant as to evidence seized from the offices.

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B. DEFENDANTS DID NOT HAVE A EXPECTATION OF PRIVACY AS TO THE FALSE IDENTIFICATION DOCUMENTS SEIZED AT THE 907 CLUB

Defendants also cannot establish standing to challenge LAPD's seizure of the false identification documents that the female employees possessed. Defendants had no expectation of privacy in these documents, because they did not personally own the documents. They belonged to the female employees. The documents were also not under defendants' exclusive control, as they were inside the lockers of the female employees. (Exhibit C, at 6648-49, 6651). Since defendants cannot assert an expectation of privacy vicariously, they do not have standing to challenge the seizure of the false identification documents. See United States v. Struckman, 603 F.3d 731, 746 (9th Cir. 2010); Silva, 247 F.3d at 1055.[8]

C. DEFENDANTS' CLAIM THAT THE SEARCH WARRANT APPLICATION DID NOT ESTABLISH PROBABLE CAUSE MUST FAIL

1. DEFENDANTS' CLAIM MUST FAIL ON PROCEDURAL GROUNDS

If a defendant makes no showing that a warrant was obtained through a law enforcement officer's "intentional or reckless misstatements of facts or deliberate omissions tending to mislead" the issuing court, the evidence may not be suppressed, even if probable case for the warrant was lacking. United States

[8] Furthermore, while at the 907 Club, LAPD officers could have requested identification from the female employees without implicating any Fourth Amendment protections. See Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 542 U.S. 177, 178 (2004); INS v. Delgado, 466 U.S. 210, 216 (1984).

v. Washington, 797 F.2d 1461, 1468 (9th Cir. 1986)[9] (citing United States v. Leon, 468 U.S. 897, 922-25 (1984); United States v. Stanert, 762 F.2d 775, 781, amended, 769 F.2d 1410 (9th Cir. 1985)).

In their motion, defendants make multiple allegations against LAPD and ICE. However, defendants never claim that in seeking the search warrant, the LAPD intentionally or reckless misstated any facts. Defendants also never claim that LAPD made deliberate omissions as part of an effort to mislead the Superior Court. Therefore, on this procedural ground alone, defendants' assertions that there was a lack or probable cause for a search warrant must fail.

2. DEFENDANTS' CLAIM MUST FAIL ON SUBSTANTIVE GROUNDS

A determination of probable cause must be upheld if under the "totality of the circumstances," the issuing court had a substantial basis for determining that probable cause existed to support the issuance of the search warrant. Illinois v. Gates, 462 U.S. 213, 238 (1983); United States v. Fannin, 817 F.2d 1379, 1381 (9th Cir. 1987). Further, the issuing court's finding of a "substantial basis" should be given great deference. Fannin, 817 F.2d at 1381; United States v. Angulo-Lopez, 791 F.2d 1394, 1396 (9th Cir. 1986).

In the instant case, defendants assert that there was insufficient evidence to establish probable cause for the search

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[9] In their motion to suppress, defendants cite to United States v. Washington, 782 F.2d 807 (9th Cir. 1986). (Defendants' motion, at 21, 22). These citations are inappropriate because the opinion was superseded by United States v. Washington, 797 F.2d 1461, 1468 (9th Cir. 1986).

warrant. Defendants state that "LAPD knew there was no prostitution or gambling at the Club." (Defendant's motion, at 12). Defendant also state that there was "nothing more than an undercover officer playing pool with a club patron for money ... and the exposure of intimate body parts during lap dancing." (Id.). Later, defendants assert that the only evidence of prostitution was that one occasion, LAPD officers found condoms on the floor of a bathroom and saw the exposure of intimate body parts. (Id. at 16-17).

Defendants misstate the facts that were presented to the Superior Court judge, as stated in the search warrant. On four occasions between July 30, 2010, and August 25, 2010, undercover LAPD officers observed male customers playing pool for money. (Exhibit A, at 7669-70). On two of these occasions, officers played in a game for money. (Id.).

On all four occasions, this illegal gambling occurred within sight of the club's staff. (Id. at 7669-70). Thus, there was fair reason to believe that the 907 Club allowed and may even have indirectly profited from illegal gambling within the establishment. Thus, there was probable cause to believe that violations of California law occurred as a result of this activity. See CA Penal Code §§ 318 (place of prostitution or illegal gambling), 330 (gambling), and 331 (owner permitting in-house gambling).

Perhaps more importantly, there was evidence of prostitution presented to the Superior Court. On July 22, 2010, a female employee told undercover LAPD officer that lewd acts and prostitution occurred at the club. (Exhibit A, at 7669). On

July 30, 2010, one undercover LAPD officers found used condoms on a restroom floor, and two undercover officers observed multiple males digitally penetrate female dancer's vaginas in exchange for cash. (Id.). On November 2, 2010, a CI told LAPD officers that while working at the club, she saw female dancers expose their breasts and allow male customers to digitally penetrate their vaginas in exchange for cash. (Id. at 7671).

Given the foregoing, there was ample evidence that acts of prostitution were occurring at the 907 Club. The digital penetration of female dancers for money amounted to lewd acts and prostitution under California Penal Code Sections 647(a) (lewd acts) and 647(b) (prostitution). See Pryor v. Municipal Court, 25 Cal.3d 238, 256 (1979) (touching of genitals for the purposes of sexual arousal or gratification amounts to a lewd or dissolute conduct under CA Penal Code § 647(a)); Wooten v. Superior Court, 93 Cal. App. 4th 422, 433 (4th Dist. 2001) (determining that CA Penal Code § 647(b) requires sexual contact between the prostitute and customer).

Since these acts of prostitution occurred in front of the club's staff and the club collected money in exchange for these acts, there was evidence of other violations of the California Penal Code relating to prostitution. See CA Penal Code §§ 266h(b) (pimping, receipt of earnings or proceeds), and 318 (place of prostitution or illegal gambling).

Given the foregoing, there was probable cause for the issuance of the search warrant, because there was "a fair probability that contraband or evidence of a crime w[ould] be found in a particular place, based upon the totality of the

circumstances." United States v. SDI Future Health, Inc., 568 F.3d 684, 703 (9th Cir. 2009) (quotation and citations omitted). Accordingly, this Court should find that the Superior Court had a substantial basis for determining that probable cause existed to support the issuance of the search warrant. Accordingly, defendants' claim that probable cause was lacking must fail.

D. THE SEARCH WARRANT WAS NOT OVERLY BROAD

A search warrant must particularly describe the items to be searched and seized and must give police officers objective standards to distinguish items to be seized. SDI Future Health, Inc., 568 F.3d at 702; Washington, 797 F.2d at 1471-72. A search warrant is overly broad, if in listing the documents to be seized, there is no indication of any alleged crime to which the documents pertain. United States v. Kow, 58 F.3d 423, 427 (9th Cir. 1995). However, the listing of the type of criminal activity in relation to the documents sought is sufficient. Washington, 797 F.2d at 1472 (concluding that in a search warrant for business records, the "phrase 'involvement and control of prostitution activity' is narrow enough to satisfy the particularity requirement of the Fourth Amendment. It effectively tells the officers to seize only items indicating prostitution activity.") (citations omitted).

In their motion to suppress, defendants claim that the search warrant was overly broad, because the warrant itself allowed LAPD to seize "all records, electronics and computers." (Defendant's motion at 21). Defendant also claims that since there was no allegation in the search warrant that the 907 club was "permeated with fraud," there was no justification for the

"wholesale taking" of such records. (Id.).

Defendants again misstate what appears in the actual search warrant. The search warrant authorized LAPD to search "[a]ll employee records maintained by the club's management, ledgers and records with identification of employees and work schedules." (Exhibit A, at 7667). LAPD was also authorized to search electronic storage devices for "records of payment regarding prostitution or gambling." (Id.). The warrant further allowed the LAPD to search for items that are "used for the purpose of prostitution." (Id.).

Given the forgoing, at a minimum, the warrant authorized a search of items related to prostitution, which included any records of payment to prostitutes or receipts of income derived from prostitution that might be included in business records. LAPD was also authorized to search for records identifying employees who could be prostitutes. This was perfectly reasonable given that certain women at the 907 Club were engaging in prostitution. Since the warrant specifically limited the search to documents and other items concerning gambling or prostitution, the warrant was not overly broad. See Washington, 797 F.2d at 1472.

E. LAPD OFFICERS DID NOT EXCEED THE SCOPE OF THE WARRANT

Defendants also assert that LAPD officers exceeded the scope of the warrant, because LAPD seized a very large volume of documents. (Defendant's motion, at 30-31). Once again, defendants' argument must fail.

The search and seizure of large quantities of materials is justified if the material is within the scope of the search

warrant. United States v. Hayes, 794 F.2d 1348, 1355 (9th Cir. 1986). Non-incriminatory documents may also be examined to determine whether they are among the documents that should be seized. Id. at 1356 (citing Andresen v. Maryland, 427 U.S. 463, 482 n.11 (1976)). Furthermore, a generalized seizure of business records may be justified if 1) there is probable cause to believe that the entire business is merely a scheme to defraud or 2) all business records are evidence of criminal activity. Kow, 58 F.3d at 427.

Defendants apparently concede, at least to some extent, that LAPD was authorized to examine the 907 Club's business records off-site, because such an examination would have been too time-consuming at the club. Thus, the taking of the large quantity of materials within the scope of the warrant for review should not be an issue.

Additionally, the warrant authorized the seizure of "[a]ll employee records maintained by the club's management, ledgers and records with identification of employees and work schedules." (Exhibit A, at 7667). These records included 834 employment applications for 907 Club employees. (Exhibit I, ICE Report of Investigation, at 3;[10] Declaration of Porter, at 3). LAPD's seizure of the employment applications was entirely within the scope of the warrant. The warrant also authorized the seizure of records related to these individual's work schedules and documents concerning payment to these individuals. Thus, the seizure of a large quantity of documents was justified.

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[10] This document was only recently generated and has not yet been disclosed in discovery.

F. LAPD OFFICERS COULD HAVE SEIZED THE EMPLOYMENT APPLICATIONS UNDER THE PLAIN VIEW DOCTRINE

In reviewing the documents for evidence of prostitution, LAPD discovered evidence that the club hired women who did not possess valid identification. Among the documents LAPD seized pursuant to the warrant were the employment applications. (Exhibit I, ICE Report of Investigation, at 3; Declaration of Porter, at 3). These applications contained copies of California identification cards, some of which were fraudulent on their face. (Declaration of Porter, at 3). ICE checked the numbers on the identification against the California Department of Motor Vehicle ("DMV") database. (Exhibit I, at 3). These checks revealed that 269 numbers appeared valid, but 358 numbers did not exist or matched the names of other persons. (Id.).

The copies of identification cards attached to the employment applications indicate that the 907 Club employed women who did not possess valid identification, which was both a violation of the club's Condition Use Permit and a violation of law. See Los Angeles Municipal Code § 12.29 (violation of conditional use permit). Other business records, such as the employee payroll records, seized pursuant to the warrant, evidenced that the club hired and continued to employ individuals without valid identification. The club derived income from the employment of such individuals, and thus, a very large portion of the business records related to criminal activity, which served as a basis to seize and retain these documents. See Kow, 58 F.3d at 427.

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LAPD could also have seized these documents under the plain view doctrine. Under the plain view doctrine, a law enforcement officer in possession of a search warrant to search a given area for particular objects may also seize other objects of an incriminating character which can be seen in plain view. Horton v. California, 496 U.S. 128, 135 (1990). Thus, for such documents to be admissible, the officer must have rightful access to the objects, and their incriminating nature must be immediately apparent. Id. at 136-37.

Inadvertence is not a requirement for an item to be seized in plain view. Kentucky v. King, 131 S. Ct. 1849, 1859 (2011); Horton, 496 U.S. at 141-42. An officer may seize evidence in plain view even if the officer may be "'interested in an item of evidence and fully expec[t] to find it in the course of a search.'" King, 131 S. Ct. at 1859 (quoting Horton, 496 U.S. at 138).

In this case, the search warrant authorized LAPD officers to be present at the 907 Club and to search for documents within the club's offices. (Exhibit A, at 7667). Thus, the officers had a right to be in the location where documents concerning the employment of individuals without valid identification could be found. Copies of identification documents could readily be determined to be evidence of criminal activity due to the poor qualify of the counterfeit documents or by running checks against the DMV databases. Other documents, such as employee payroll records, that contain the name of the female employees who possessed fraudulent identification documents would be readily apparent by reading the documents.

At the time, LAPD officers executed the search warrant, LAPD knew that many women at the club did not have valid identification. However, this fact did not preclude LAPD from seizing documents related to employment of such women under the plain view doctrine. King, 131 S. Ct. at 1859; Horton, 496 U.S. at 138. Thus, giving all the foregoing, defendants' motion to suppress must fail on the merits.

G. THE EMPLOYMENT APPLICATIONS AND OTHER DOCUMENTS FROM THE 907 CLUB ARE ALSO ADMISSIBLE AS INEVITABLE DISCOVERY

Even if LAPD committed a Fourth Amendment violation that warrants suppression of at least some evidence, which did not occur, such evidence is still admissible under the inevitable discovery exception to the exclusionary rule. In Nix v. Williams, 467 U.S. 431 (1984), the Supreme Court adopted this exception to the exclusionary rule to "block setting aside convictions that would have been obtained without police misconduct." Id. at 443 n.4 and 444. Thus, if law enforcement officers following routine procedures would have inevitably uncovered the evidence at issue, the evidence should not be suppressed despite any constitutional violation. United States v. Young, 573 F.3d 711, 721 (9th Cir. 2009); United States v. Ramirez-Perez, 872 F.2d 1392 (9th Cir. 1989). In order for the inevitable discovery exception to apply, the government must show by a preponderance of evidence that there was a lawful alternative for discovering the evidence. United States v. Ruckes, 586 F.3d 713, 719 (9th Cir. 2009); United States v. Reilly, 224 F.3d 986, 994 (9th Cir. 2000).

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In this case, ICE took lawful means to obtain evidence from LAPD through the issuance of an administrative subpoena and two grand jury subpoenas, discussed further below. (Exhibits E, F, and G). Hypothetically, if LAPD had not executed the warrant, the documents in question would have remained with the 907 Club. ICE would have then sought a federal search warrant to obtain these documents. (Declaration of Porter, at 5). Additionally, if LAPD had returned documents to the 907 Club, instead of turning them over to ICE, ICE again would have applied for a federal search warrant. (Id.).[11] ICE would have then obtained the documents at issue. Accordingly, the evitable discovery exception to the exclusionary rule should apply in this case.

H. LAPD OFFICERS PROPERLY TURNED OVER THE 907 CLUB MATERIALS TO ICE PURSUANT TO ADMINISTRATIVE AND GRAND JURY SUBPOENAS

Defendants claim that, following a search of all materials seized, LAPD was required to return these materials to the 907 Club. (Defendant's motion at 10, 11). Defendants also claim that LAPD improperly turned over the materials to ICE. (Defendant's motion at 32). Defendants provide no authority in support of this portion of their arguments. In fact, relevant case law indicates that LAPD properly turned over the materials to ICE.

The Ninth Circuit has determined that "'once an item in an individual's possession has been lawfully seized and searched,

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[11] By mid-December 2010, probable cause clearly existed to establish that the 907 Club hired and continued to employ illegal aliens and that documents reflected such employment existed. For a full discussion of this evidence, see Agent Porter's declaration in support of the complaint and arrest warrants.

subsequent searches of that item, so long as it remains in the legitimate uninterrupted possession of the police, may be conducted without a warrant.'" United States v. Johnson, 820 F.2d 1065, 1072 (9th Cir. 1987) (quoting United States v. Burnette, 698 F.2d 1038, 1049 (9th Cir. 1983)). Thus, once items are seized, an individual could no longer reasonably expect that the items would be free from further examination by law enforcement officers, including officers from other law enforcement agencies. Johnson, 820 F.2d at 1072.

In Hell's Angels Motorcycle Corp. v. McKinley, 360 F.3d 930 (9th Cir. 2004), the Ninth Circuit addressed a virtually identical situation. In McKinley, local law enforcement officers executed a search warrant against a Hell's Angels clubhouse to search for evidence relating to a murder and a robbery. Id. at 931. Even though two truck loads of property was seized, none of it was used in a state prosecution. Id. After the search and seizure, an FBI agent served an administrative subpoena on the local authorities, and pursuant to this subpoena, certain items were turned over to the FBI. Id. at 931-32.

The Hell's Angels subsequently filed a Bivens action, claiming, among other things, that 1) federal and local law enforcement conspired to obtain an overly broad search warrant so that the seized items could be turned over to the FBI, and 2) the Hell's Angels were deprived of their property in violation of their constitutional rights. Id. at 932. However, the Hell's Angels did not challenge the legality of the initial search. Id. at 934.

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In McKinley, the Ninth Circuit determined that "the Hell's Angels' reasonable expectation of privacy in the documents was substantially reduced by the lawful seizure of the documents by [local law enforcement]." Id. (citing United States v. Holtzman, 871 F.2d 1496, 1505 (9th Cir. 1989), overruled on other grounds, Horton v. California, 496 U.S. 128 (1990)). Thus, the FBI's subsequent search of the documents resulted in no constitutional deprivation. Id.

In this case, defendants claim that the LAPD search warrant was a ruse and subterfuge to turn over documents to ICE. (Defendants' motion at 32-33). However, as discussed above, LAPD's search of the 907 Club and seizure of documents was appropriate. The local search warrant was not a ruse or subterfuge, because LAPD's investigation was valid and had an independent basis. See United States v. Washington, 797 F.2d 1461, 1470-71 (9th Cir. 1986). Furthermore, given the decision in McKinley, ICE was not barred from obtaining documentation from the LAPD through the use of administrative and grand jury subpoenas.

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IV.

CONCLUSION

For the reasons stated above, the government respectfully requests that the Court deny defendants' motion to suppress on the ground that defendants lack standing. The government also respectfully requests that the Court deny the motion to suppress evidence seized from the 907 Club on substantive grounds.

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Respectfully submitted,

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